

**SENATE JOURNAL
66TH LEGISLATURE
FORTY-SEVENTH LEGISLATIVE DAY**

Helena, Montana
March 8, 2019

Senate Chambers
State Capitol

Senate convened at 1:01 p.m. President Sales presiding. Invocation by Senator Regier. Pledge of Allegiance to the Flag.

Roll Call. Forty-seven members present, Senators Ankney, Fielder, and Hinebaugh excused. Quorum present.

BILLS AND JOURNALS (Keenan, Chair):

3/8/2019

We, your committee on Bills and Journals, having examined the daily journals for the thirty-first through thirty-fifth legislative days, find the same to be correct.

Correctly printed: **SR 39, SR 40, SR 41, SR 42.**

REPORTS OF STANDING COMMITTEES

JUDICIARY (Regier, Chair):

3/8/2019

HB 198, be concurred in.

HB 334, be concurred in.

Without objection, committee reports were adopted.

MESSAGES FROM THE GOVERNOR

February 28, 2019

The Honorable Scott Sales
President, Montana State Senate
Capitol Station
Helena, MT 59620

By Electronic Delivery

Dear President Sales:

In accordance with Montana Code Annotated 5-5-302, I submit to you and the Montana Senate a cabinet appointment for confirmation.

- ▶ Department of Commerce, Director, **Ms. Tara Rice**, 301 S. Park Ave, Helena, MT 59601, effective March 1, 2019;

I have included a packet of materials for your consideration. Stacey Otterstrom, my Boards and

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Appointments Advisor, is available as this appointment moves through the confirmation process. She can be reached at sotterstrom@mt.gov or by phone at (406) 444-4405.

Sincerely,

STEVE BULLOCK
Governor

March 8, 2019

Senator Scott Sales, President
Montana Senate
Capitol Building
Helena, MT 59601

Dear President Sales:

On Friday, March 8, 2019, I am returning **Senate Bill 83** - Fitzpatrick, with amendments.

I have **vetoed Senate Bill 54** - Thomas.

Sincerely,

STEVE BULLOCK
Governor

March 8, 2019

The Honorable Scott Sales
President of the Senate
State Capitol
Helena, MT 59601

The Honorable Greg Hertz
Speaker of the House
State Capitol
Helena, MT 59601

Dear President Sales and Speaker Hertz:

In accordance with the power vested in me as Governor by the Constitution and the laws of the

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State of Montana, I hereby **return with amendments Senate Bill 83** (SB 83), "AN ACT ESTABLISHING ALLOWABLE AND PROHIBITED PRACTICES FOR PHARMACY BENEFIT MANAGERS AND OTHER THIRD-PARTY PAYERS; AMENDING SECTIONS 33-22-101 AND 33-22-170, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

SB 83 provides for some common-sense measures that will further modernize prescription drug benefits in the State of Montana. The legislation enjoyed overwhelming support, passing with nearly unanimous votes in both chambers. However, Section 1 Part D of the bill inadvertently includes language that would allow pharmaceutical benefit managers (PBM) to claw-back payments simply by forcing pharmacies to agree to the provision in take-it-or-leave-it contracts. As the PBM market continues to consolidate, the increased market concentration provides PBMs with negotiating leverage which enables them to dictate terms in contracts with community pharmacies.

The amendment I propose will make the bill mirror a similar state law that was enacted in North Dakota in 2017. It will allow small pharmacy owners to operate on a level playing field. Small pharmacy owners require stability and predictability in their businesses. This amendment will help achieve both, and ultimately help to keep Montana's small pharmacies in business and give Montana patients better access and more choices when filling prescriptions.

I respectfully ask for your support of this amendment.

Sincerely,

STEVE BULLOCK
Governor

Report No. 001, March 8, 2019

Governor's recommendations for amendments to **Senate Bill 83** (reference copy -- salmon) are as follows:

1. Page 1, line 14.

Following: "claim;"

Insert: "or"

2. Page 1, line 15.

Following: "adjudicated"

Strike: "; or"

Insert: "."

3. Page 1, line 16 through line 18.

Strike: subsection (d) in its entirety

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March 8, 2019

The Honorable Scott Sales
President of the Senate
State Capitol
Helena, MT 59601

The Honorable Greg Hertz
Speaker of the House
State Capitol
Helena, MT 59601

Dear President Sales and Speaker Hertz:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby **veto Senate Bill 54** (SB 54), "AN ACT GENERALLY REVISING INSURANCE LAWS RELATED TO MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; ALLOWING A MULTIPLE EMPLOYER WELFARE ARRANGEMENT TO FORM UNDER A PATHWAY ESTABLISHED IN FEDERAL RULES; DELETING THE DEFINITION OF 'BONA FIDE ASSOCIATION'; REVISING ELIGIBILITY FOR CERTIFICATE OF AUTHORITY LAWS; REVISING REPORTING REQUIREMENTS; REVISING INSURANCE CODE APPLICATION TO MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AMENDING SECTIONS 33-35-102, 33-35-103, 33-35-202, 33-35-301, AND 33-35-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Last year, the federal government weakened consumer protections on a group of employer health plans called Multiple Employer Welfare Arrangements (MEWA). While MEWAs can serve an important role, without proper oversight bad actors in the MEWA industry have taken advantage of consumers. There have been several well-documented cycles of large-scale scams, fraud, and insolvencies involving entities purporting to be MEWAs. As a result, Montana is one of many states that have taken steps to enhance oversight of these entities in order to prevent fraud and abuse.

SB 54 would make it easier to sell plans in Montana that can deny coverage based on pre-existing conditions. It would also allow these plans to sell insurance across state lines, avoiding compliance with Montana-specific consumer protections, such as gender equality, the autism assured benefit, and other protections that exist specifically in Montana law. MEWAs can already operate in Montana if they do so legitimately, even if formed under the new federal guidance. If the federal guidance leads to a proliferation of bad actors, Montana needs to be sure we have the tools in the toolbox to protect businesses and consumers.

The United States Department of Labor most likely does not have the resources to protect consumers from these new "national" MEWAs that may sell across state lines under the new federal rules. Therefore, many states are taking steps to strengthen their state laws, allowing them more regulatory authority over these entities. SB 54 does not strengthen Montana laws to ensure proper oversight of the new MEWAs, and, in many ways, SB 54 does just the opposite by weakening existing state regulatory authority over them.

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Finally, the provision incorporating the federal law into state statute is drafted in such a way that it would automatically incorporate any future changes in that law into Montana statute, thus limiting legislative authority.

For these reasons, I veto SB 54.

Sincerely,

STEVE BULLOCK
Governor

FIRST READING AND COMMITMENT OF BILLS

The following House bills, previously introduced, were referred to committees:

HB 150, introduced by F. Garner, J. Bachmeier, Bachmeier, referred to Energy and Telecommunications.

HB 214, introduced by V. Ricci, referred to Business, Labor, and Economic Affairs.

HB 286, introduced by A. Redfield, referred to Natural Resources.

HB 298, introduced by C. Pope, J. Bahr, M. Caferro, M. Funk, B. Grubbs, J. Keane, K. Kelker, S. Morigeau, C. Schreiner, R. Shaw, S. Stewart Peregoy, S. Vinton, J. Windy Boy, referred to Education and Cultural Resources.

HB 332, introduced by J. Kassmier, D. Bartel, B. Brown, E. Buttrey, J. Fuller, W. Galt, S. Hinebauch, L. Jones, D. Loge, F. Moore, A. Redfield, D. Skees, B. Tschida, referred to Agriculture, Livestock and Irrigation.

HB 343, introduced by B. Hamlett, M. Caferro, K. Dudik, S. Fitzpatrick, G. Hertz, J. Keane, N. McConnell, S. Sales, C. Schreiner, J. Sesso, J. Welborn, referred to State Administration.

HB 379, introduced by T. Manzella, S. Berglee, referred to Local Government.

HB 381, introduced by D. Dunn, referred to Agriculture, Livestock and Irrigation.

HB 388, introduced by M. Caferro, C. Pope, referred to Education and Cultural Resources.

HB 393, introduced by J. Kassmier, J. Bachmeier, D. Bedey, N. Duram, J. Fuller, W. Galt, D. Zolnikov, referred to Highways and Transportation.

HB 394, introduced by G. Hertz, referred to Taxation.

HB 416, introduced by R. Fitzgerald, E. Buttrey, C. Pope, M. Sweeney, M. Lang, referred to Business, Labor, and Economic Affairs.

HB 433, introduced by F. Moore, N. Ballance, M. Caferro, T. Jacobson, L. Jones, M. McNally, A. Olszewski, R. Osmundson, C. Smith, referred to Finance and Claims.

HB 441, introduced by K. White, D. Ankney, D. Bartel, M. Cuffe, A. Doane, W. Galt, S. Gunderson, B. Hamlett, D. Harvey, D. Kary, J. Kassmier, J. Keane, D. Loge, G. Pierson, J. Read, S. Sales, R. Shaw, D. Skees, M. Sweeney, J. Welborn, T. Welch, referred to Natural Resources.

HB 462, introduced by T. Burnett, referred to Taxation.

HB 476, introduced by J. Keane, D. Ankney, referred to Energy and Telecommunications.

HB 482, introduced by A. Doane, J. Windy Boy, referred to State Administration.

HB 489, introduced by M. Regier, referred to Taxation.

HB 497, introduced by W. Galt, G. Hertz, S. Sales, B. Tschida, referred to Fish and Game.

HB 502, introduced by T. Burnett, referred to Public Health, Welfare and Safety.

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HB 505, introduced by W. Sales, referred to Natural Resources.

HB 506, introduced by S. Gunderson, F. Anderson, B. Beard, D. Bedey, B. Brown, W. Curdy, D. Fern, R. Fitzgerald, J. Fuller, W. Galt, R. Garcia, B. Grubbs, B. Hamlett, K. Kelker, C. Keogh, D. Mortensen, M. Noland, J. Read, A. Redfield, V. Ricci, M. Ryan, W. Sales, L. Sheldon-Galloway, D. Skees, B. Tschida, S. Vinton, T. Welch, K. White, T. Woods, referred to State Administration.

HB 513, introduced by C. Pope, referred to Energy and Telecommunications.

HB 518, introduced by E. Buttrey, W. McKamey, referred to Public Health, Welfare and Safety.

HB 520, introduced by R. Shaw, D. Ankney, E. Buttrey, M. Cuffe, G. Custer, J. Dooling, B. Hamlett, C. Knudsen, W. McKamey, D. Salomon, J. Small, J. Welborn, T. Welch, referred to Agriculture, Livestock and Irrigation.

HB 527, introduced by Z. Brown, referred to Taxation.

HB 529, introduced by F. Moore, referred to Public Health, Welfare and Safety.

HB 545, introduced by G. Pierson, referred to Public Health, Welfare and Safety.

HB 547, introduced by L. Bishop, referred to Business, Labor, and Economic Affairs.

HB 553, introduced by F. Moore, N. Ballance, D. Bedey, W. Galt, G. Hertz, K. Holmlund, M. Hopkins, L. Jones, J. Keane, R. Lynch, R. Osmundson, J. Sesso, referred to Finance and Claims.

HB 580, introduced by R. Knudsen, W. Curdy, G. Custer, J. Dooling, D. Fern, J. Fuller, B. Grubbs, S. Gunderson, J. Karjala, J. Krautter, D. Lenz, D. Loge, F. Mandeville, T. Moore, J. Read, A. Redfield, D. Skees, M. Sweeney, B. Usher, P. Webb, R. Webb, T. Welch, D. Zolnikov, referred to Highways and Transportation.

HB 583, introduced by D. Lenz, referred to Public Health, Welfare and Safety.

HB 584, introduced by S. Morigeau, referred to Business, Labor, and Economic Affairs.

HB 599, introduced by J. Windy Boy, B. Bessette, K. Dudik, M. Dunwell, J. Karjala, M. Ryan, J. Small, S. Webber, referred to Public Health, Welfare and Safety.

The following House joint resolutions, previously introduced, were referred to committees:

HJ 8, introduced by K. Dudik, F. Anderson, D. Ankney, D. Bedey, S. Berglee, K. Bogner, E. Buttrey, N. Duram, J. Fuller, F. Garner, T. Gauthier, W. McKamey, A. Olszewski, G. Pierson, D. Sands, R. Shaw, F. Smith, M. Weatherwax, referred to State Administration.

HJ 18, introduced by W. Galt, D. Bartel, D. Bedey, S. Berglee, M. Blasdel, K. Bogner, B. Brown, E. Buttrey, D. Dunn, J. Fuller, F. Garner, B. Hamlett, G. Hertz, S. Hinebauch, L. Jones, J. Kassmier, C. Knudsen, R. Knudsen, D. Lenz, D. Mortensen, A. Redfield, M. Regier, S. Sales, W. Sales, R. Shaw, D. Skees, B. Tschida, K. White, referred to Fish and Game.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Majority Leader Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Phillips in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

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SB 183 - Senator Blasdel moved consideration of **SB 183** be passed to the 51st legislative day. Without objection, so ordered.

SB 271 - Senator Lang moved **SB 271** do pass. Motion carried as follows:

Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Brown, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Gross, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vance, Vuckovich, Webb, Webber, Welborn, Mr President.
Total 47

Nays: None.
Total 0

Paired: None.

Excused: Ankney, Fielder, Hinebauch.
Total 3

Absent or not voting: None.
Total 0

HB 105 - Senator Malek moved **HB 105** be concurred in. Motion carried as follows:

Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Brown, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Gross, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vance, Vuckovich, Webb, Webber, Welborn, Mr President.
Total 47

Nays: None.
Total 0

Paired: None.

Excused: Ankney, Fielder, Hinebauch.
Total 3

Absent or not voting: None.
Total 0

HB 153 - Senator McClafferty moved **HB 153** be concurred in. Motion carried as follows:

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Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Gross, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vuckovich, Webb, Webber, Welborn.
Total 44

Nays: Brown, Vance, Mr President.
Total 3

Paired: None.

Excused: Ankney, Fielder, Hinebauch.
Total 3

Absent or not voting: None.
Total 0

SB 44 - Senator Cohenour moved **SB 44** do pass. Motion carried as follows:

Yeas: Barrett, Bennett, Boland, Cohenour, Ellis, Fitzpatrick, Flowers, Gauthier, Gross, Hoven, Howard, Jacobson, MacDonald, Malek, McClafferty, McConnell, McNally, Phillips, Pomnichowski, Richmond, Sands, Sesso, Smith F, Vuckovich, Webber, Welborn.
Total 26

Nays: Blasdel, Bogner, Brown, Cuffe, Ellsworth, Esp, Gillespie, Kary, Keenan, Lang, Olszewski, Osmundson, Regier, Salomon, Small, Smith C, Tempel, Thomas, Vance, Webb, Mr President.
Total 21

Paired: None.

Excused: Ankney, Fielder, Hinebauch.
Total 3

Absent or not voting: None.
Total 0

SB 256 - Senator Ellsworth moved **SB 256** do pass. Motion carried as follows:

Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Brown, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vance, Vuckovich, Webb, Webber, Welborn, Mr President.
Total 46

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Nays: Gross.

Total 1

Paired: None.

Excused: Ankney, Fielder, Hinebauch.

Total 3

Absent or not voting: None.

Total 0

HB 283 - Senator Esp moved **HB 283** be concurred in. Motion carried as follows:

Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Brown, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Gross, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vance, Vuckovich, Webb, Webber, Welborn, Mr President.

Total 47

Nays: None.

Total 0

Paired: None.

Excused: Ankney, Fielder, Hinebauch.

Total 3

Absent or not voting: None.

Total 0

SB 224 - Senator Jacobson moved **SB 224** do pass. Motion carried as follows:

Yeas: Barrett, Bennett, Bogner, Boland, Cohenour, Ellis, Esp, Fitzpatrick, Flowers, Gauthier, Gross, Hoven, Jacobson, Keenan, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Vuckovich, Webber, Welborn.

Total 34

Nays: Blasdel, Brown, Cuffe, Ellsworth, Gillespie, Howard, Kary, Lang, Osmundson, Thomas, Vance, Webb, Mr President.

Total 13

Paired: None.

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Excused: Ankney, Fielder, Hinebauch.

Total 3

Absent or not voting: None.

Total 0

SR 29 - Senator Sands moved that the nomination transmitted by the Governor be concurred in and confirmed by the Senate in accordance with **SR 29**. Motion carried as follows:

Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Brown, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Gross, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vance, Vuckovich, Webb, Webber, Welborn, Mr President.

Total 47

Nays: None.

Total 0

Paired: None.

Excused: Ankney, Fielder, Hinebauch.

Total 3

Absent or not voting: None.

Total 0

Senator Cohenour arose on a point of personal privilege and provided additional information in response to questions during discussion of **SB 44**.

Majority Leader Thomas moved the committee **rise and report**. Motion carried. Committee arose. Senate resumed. President Sales presiding.

Senator Phillips moved the Committee of the Whole report be adopted. Report adopted as follows:

Yeas: Barrett, Bennett, Blasdel, Bogner, Boland, Brown, Cohenour, Cuffe, Ellis, Ellsworth, Esp, Fitzpatrick, Flowers, Gauthier, Gillespie, Gross, Hoven, Howard, Jacobson, Kary, Keenan, Lang, MacDonald, Malek, McClafferty, McConnell, McNally, Olszewski, Osmundson, Phillips, Pomnichowski, Regier, Richmond, Salomon, Sands, Sesso, Small, Smith C, Smith F, Tempel, Thomas, Vance, Vuckovich, Webb, Webber, Welborn, Mr President.

Total 47

Nays: None.

Total 0

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Paired: None.

Excused: Ankney, Fielder, Hinebauch.
Total 3

Absent or not voting: None.
Total 0

MOTIONS

Majority Leader Thomas moved the Senate accede to the request of the House to appoint a conference Committee to confer on **Senate Amendments to House Bill 35**. The President appointed:

Senator Blasdel, Chair
Senator Vance
Senator Vuckovich

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Thomas moved the Senate adjourn until 9:00 a.m., Saturday, March 9, 2019, the forty-eighth legislative day. Motion carried.

Senate adjourned at 1:44 p.m.

MARILYN MILLER
Secretary of the Senate

SCOTT SALES
President of the Senate